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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 418-419

IN THE MATTER OF: NATIONAL AIRCRAFT CORPORATION, A CORPORATION, DEBTOR.

JEROME F. DUGGAN, TRUSTEE OF THE ESTATES OF CHRISTOPHER ENGINEERING COMPANY, A CORPORATION, AND NATIONAL AIRCRAFT CORPORATION, A CORPORATION,
Petitioner,

vs.

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF NATIONAL AIRCRAFT CORPORATION, A CORPORATION,
Respondent.

NATIONAL AIRCRAFT CORPORATION, A CORPORATION,
Petitioner,

vs.

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF NATIONAL AIRCRAFT CORPORATION, A CORPORATION,
Respondent.

Petition for Writ of Certiorari

TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Jerome F. Duggan, as trustee in reorganization for National Aircraft Corporation, a subsidiary debtor, by appointment of the United States Court of Bankruptcy for the Eastern Division of the Eastern District of Mis-

souri, a reorganization court, under Chapter X of the Chandler Act (R. 62), with the consent and at the direction of said Court (Appendix) and National Aircraft Corporation, subsidiary debtor, by adjudication of the same Court (R. 61), respectfully pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit (R. 105) rendered on two separate appeals in which these petitioners were appellants and James C. Sansberry, trustee in bankruptcy, was respondent.

The appeals were tried together on a single record, and determined by a single judgment (R. 105).

The judgment affirmed the power of the Bankruptcy Court for the Southern District of Indiana and its trustee to sell the assets of petitioner, National Aircraft Corporation, in a proceeding under Chapters I to VII of the Chandler Act (R. 3) after the Bankruptcy Court for the Eastern District of Missouri had received and approved (R. 61) its subsidiary debtor petition under Chapter X of the same Act and admitted it to reorganization as a wholly owned subsidiary of and in connection with the reorganization of Christopher Engineering Company, a corporation, whose debtor petition the Missouri Court had theretofore approved prior to the institution of the Chapter I-VII proceedings against National in Indiana (R. 61). The majority judges below concluded the Missouri Court's judgment was not res adjudicata and might be assailed in the Indiana Court.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on April 21, 1945 (R. 105). A petition for rehearing was filed on May 7, 1945 (R. 106), and denied on June

11, 1945 (R. 107), Judge Briggle dissenting. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended (28 USC 347 and 28 USC 350).

OPINIONS OF THE COURT BELOW.

The judgment below was by a majority of the Judges and the Opinions (3) are reported 149 Fed. (2d) 548 (Advance Sheets, August 6, 1945), and are printed in the Record herewith filed. Opinion of the Honorable William M. Sparks, Circuit Judge (R. 91); Opinion of the Honorable J. Earl Major, Circuit Judge, concurring in part only with the Opinion of Judge Sparks (R. 100); and the Dissenting Opinion of the Honorable Charles G. Briggle, District Judge (R. 101).

The concurrence of the Judges was in fact upon the opinion of Judge Major (R. 100), which concurred with a similar conclusion of Judge Sparks found on page 94 of the Record, second paragraph. The concurrence was limited to the conclusion that it was essential to the jurisdiction of the Missouri Court that it be established that the National Aircraft Corporation was a subsidiary of Christopher Engineering Company on December 27, 1943, when the Christopher debtor petition was filed in the Missouri Court. That such fact could not be established by the implications of the judgment but could only be established either by express fact findings of the Missouri Court or by extrinsic evidence and the burden of proof was upon these petitioners.

QUESTIONS PRESENTED.

A.

When a United States Bankruptcy Court, sitting as a reorganization court in a corporate reorganization proceeding under Chapter X of the Chandler Act, has

received and by an unambiguous judgment order has approved a voluntary subsidiary debtor petition and admitted the petitioner to reorganization, under Chapter X of the Chandler Act, as a subsidiary of and in connection with the reorganization of its parent corporation, whose debtor petition had theretofore been approved by the same Court, and as an incident to said judgment order has stayed, either expressly or by the operation of Section 148 of the Chandler Act (11 USC 548) a proceeding in ordinary bankruptcy under Chapters I to VII of the Chandler Act, pending against the subsidiary debtor in another bankruptcy court, and has enjoined the trustee therein appointed from selling the subsidiary debtor's assets, and such judgment order has not been directly attacked or modified, is such judgment res adjudicata on collateral attack or when questioned in the Court wherein the proceeding in ordinary bankruptcy, stayed by the judgment order, is pending?

B.

1. Whether or not when a United States Bankruptcy Court in a pending proceeding under Chapter X of the Chandler Act has received and approved by an unambiguous judgment order the voluntary debtor petition of a subsidiary corporation and has stayed and enjoined, either expressly or by the operation of Section 148 of the Bankruptcy Act (11 USC 548), an involuntary bankruptcy proceeding against the subsidiary pending in another district, the Court in which the ordinary proceeding is pending has authority to entertain a collateral attack on the judgment and on such attack to interpret for itself the jurisdictional requirements of Chapter X of the Chandler Act, under which the other Court purported to act, and on the basis of its own interpretation, which conflicts with the implications of the judgment order of the other Court which approved the debtor petition, deny full faith and credit to the judgment?

2. Whether or not express fact findings, either as to the requisite jurisdictional facts or to facts necessary to a judgment on the merits, are essential to the validity and conclusiveness of an unambiguous judgment of a United States Bankruptcy Court, when collaterally assailed, and whether or not as ruled by the Court below in the case involved herein, the failure of the Missouri Court expressly to find that National Aircraft Corporation was a subsidiary of Christopher Engineering Company on December 27, 1943, was sufficient to destroy the presumption arising from the implications of the judgment that the Missouri Court, as an incident to entering the judgment, had properly construed the applicable law and on proper evidence had found all facts necessary to the judgment as entered, including the fact, if necessary to its jurisdiction, that National Aircraft Corporation was in fact a subsidiary of Christopher Engineering Company when the latter's debtor petition was filed on December 27, 1943.

C.

1. Whether or not, under the provisions of Chapter X of the Chandler Act, and more particularly under the provisions of Section 129 thereof (11 USC 529), a subsidiary corporation as defined in Section 106-13 (11 USC 506-13) by or against which no other petition under Chapter X of the Chandler Act is pending, may file its voluntary debtor petition as defined in Section 106-9 (11 USC 506-9) in a United States Bankruptcy Court which has theretofore approved the debtor petition of its parent corporation, notwithstanding the fact that after the approval of its parent debtor petition creditors of the subsidiary debtor had instituted a proceeding in involuntary bankruptcy under Chapters I to VII of the Chandler Act against the subsidiary debtor in another district and had secured its adjudication as a bankrupt therein, and whether or not, in such case, the power of the subsidiary to file or the power and jurisdiction of the

reorganizing court to receive and approve the subsidiary debtor petition and to stay the pending involuntary bankruptcy proceedings is cut off, impaired or limited by the institution or pendency of such ordinary bankruptcy proceeding?

2. And whether or not, when a voluntary subsidiary debtor petition is filed under the circumstances presented by sub-question 1 hereof in the court which has approved the debtor petition of the parent corporation, such court is vested with exclusive jurisdiction of the subsidiary debtor and its property wherever located, as provided generally by Section 111 of the Act (11 USC 511), and whether, when such court has heard and entered an order approving such voluntary subsidiary debtor petition, does such order operate as an automatic stay of a prior pending bankruptcy proceeding as provided generally by the provisions of Section 148 of the Act (11 USC 548)?

STATEMENT.

The petitioner National Aircraft Corporation is in the anomalous situation of being a bankrupt whose assets must be liquidated in the Chapters I to VII proceeding by the terms of the judgment below and is at the same time a debtor whose assets must be conserved with a view of rehabilitation by the petitioner Duggan by virtue of the judgment of the Bankruptcy Court in Missouri. The Missouri judgment is final under Section 149 of the Chandler Act (11 USC 548). The Indiana judgment is final, subject only to the intervention of this Court.

The situation resulted from the following sequence of events:

On December 27, 1943, the Christopher Engineering Company, a Missouri corporation, filed in the Bankruptcy Court in Missouri and secured the approval of its debtor petition under Chapter X of the Chandler Act (R. 92-100).

On January 21, 1944, some three or four weeks later, creditors of the National Aircraft Corporation, an Indiana corporation, instituted involuntary proceedings in bankruptcy against it in the Indiana Bankruptcy Court under Chapter I to VII of the Chandler Act (R. 12). Such proceedings were had that it was adjudicated a bankrupt on February 7, 1944, and respondent Sansberry was appointed trustee to liquidate its assets (R. 12). He subsequently procured of the Referee authority to sell the real estate, factory and major assets of the bankrupt at public auction to be held on April 20, 1944 (R. 25).

On April 19, 1944, and prior to the sale, the National Aircraft Corporation filed in the Bankruptcy Court in Missouri, which had theretofore approved a debtor petition of Christopher Engineering Company, its debtor petition under Chapter X of the Chandler Act, alleging itself to be a subsidiary of that corporation and praying that a plan of reorganization be effected for it as a subsidiary of and in connection with the reorganization of its parent corporation. It also alleged the bankruptcy proceedings pending against it in the Indiana Bankruptcy Court, and the impending sale of its assets by respondent Sansberry and prayed that the Indiana bankruptcy be stayed and Sansberry and his auctioneer enjoined under the provisions of Section 113 of the Act (11 USC 513) (R. 58).

On the same April 19, 1945, the Missouri Court heard and approved the subsidiary debtor petition (R. 61) on the findings that the petitioner, National Aircraft Corporation, was a wholly owned subsidiary of Christopher Engineering Company, principal debtor in the pending proceedings, and entitled to file its petition in the proceedings of its parent company; that the petition complied with the requirements of Chapter X of the Bankruptcy Act and had been filed in good faith (R. 62).

In connection with the approval and as part of the same judgment order the Missouri Court appointed Petitioner Jerome F. Duggan, Trustee, to operate the business and manage the property of the subsidiary debtor (R. 62), enjoined respondent Sansberry and his auctioneer from interfering with the assets or selling them and enjoined Sansberry to deliver all assets in his possession to trustee Duggan (R. 65).

Copies of the judgment were personally served on Sansberry and his auctioneer next morning before the sale began (R. 67-41).

The Trustee, however, proceeded with the sale subject to the approval of his Referee and sold the real estate and factory and certain other assets of the National and reported his proceedings to the Referee. In his report he recited the service and order of the Missouri Court, and it was not contended that any party acted without knowledge of that judgment (R. 41).

The Referee concluded that the assets were in the custody and control of the Indiana Bankruptcy Court; that title to said assets was in Sansberry as Trustee in Bankruptcy; that no application for the release of the assets had been filed in that Court and, the matter having been referred to him as Referee, it was his duty to approve or disapprove the report of sale on ordinary considerations (R. 3). Whereupon the Referee by formal order approved the sale (R. 3-4).

No question is presented as to the competency of the various steps by which the cause reached the Court below. Having heard the cause the Court below affirmed the power of the lower Court to sell National's assets (R. 105).

THE CONCURRENCE OF THE JUDGES.

The concurrence of a majority of the Court was narrowly restricted to a conclusion of law concurred in by Judge Major and Judge Sparks:

> "that the burden rested upon appellants (petitioners) to show that National was a subsidiary of Christopher on December 27, 1943, when Christopher filed its petition for a reorganization in that Court. Appellant failed to carry the burden in this respect. The most that the finding of the St. Louis Court discloses is that National was a subsidiary on April 19, 1944 . . . a showing based upon such a finding did not deprive the Indiana Court of jurisdiction; in fact it had no right to relinquish jurisdiction." (Opinion of Judge Major, R. 100).
>
> "Before there could be jurisdiction" (in the Missouri Court) "we think it must have been established that National was a subsidiary . . . on December 27, 1943, when Christopher filed a petition for reorganization . . . These were jurisdictional facts, which of necessity must have been proved before the Court in Missouri could possibly obtain jurisdiction of National or oust the jurisdiction of the District Court in Indiana, and the burden was upon petitioners to establish those facts. This they did not do." (Opinion of Judge Sparks found in second paragraph on page 94 of the Record.)

REASONS FOR GRANTING THE WRIT.

Summary.

The Questions Generally.

The decision below presents an important question of the construction of the National Bankruptcy Law, which has not been, but should be, determined by this Court.

The decision below, in effect, has applied to the corporation reorganization provisions of the Chandler Act a construction which will either destroy or so greatly impair the collateral effect of judgments of reorganization courts, as will be likely to defeat the Congressional purposes by complicating and limiting the administration of the Act and impede the prompt and effective rehabilitation of distressed corporations, contrary to the public interest.

A.

The Court below has decided an important question of Federal law, and disregarded and denied legal effect to an unambiguous judgment of a United States Bankruptcy Court where it had jurisdiction of the necessary parties and over the subject matter when questioned in a collateral proceeding.

Its decision is probably in conflict with the controlling decisions of this Court.

Chicot Drainage District v. Baxter State Bank, 308 U. S. 372, 376, 377 (84 L. Ed. 329, 335).

Kalb v. Feuerstein, 308 U. S. 433, 438, 439 (84 L. Ed. 370).

Stoll v. Gottlieb, 305 U. S. 165, 172 (83 L. Ed. 329).

And conflicts with the rulings of the several other Circuit Courts of Appeal, namely:

Walling v. Miller (CCA. 8), 138 Fed. (2d) 629, 632.

Rippberger v. A. C. Allyn Co. (CCA. 2), 113 Fed. (2d) 629, 632, 333.

Nye v. U. S. (CCA. 4), 137 Fed. (2d) 73, 77.

Mar-Tex Realization Corp. v. Wolfson (CCA. 2), 145 Fed. (2d) 360, 362.

Re Park Beach Hotel Building Corp. (CCA. 7), 96 Fed. (2d) 886.

B.

1. The Court below has decided an important question of Federal law in concluding that in a case involving a collateral assault on a judgment of a United States Court of Bankruptcy it might review the legal and factual basis of the jurisdiction of such Court.

Its decision is probably in conflict with the controlling decisions of this Court cited under A above and conflicts with the rulings of the several other Circuit Courts of Appeals cited thereunder.

2. The Court below has decided an important question of Federal law and has concluded that special findings of fact are essential parts of a judgment of a Court of the United States and that, absent such finding, a clear and unambiguous judgment of such Court may be disregarded when assailed collaterally.

The decision of the Court probably conflicts in principle with the decision of this Court in Milliken v. Meyer, 311 U. S. 457, 461, 462.

And is in conflict with the ruling of the Tenth Circuit:

Tulsa City Lines v. Mains (CCA. 10), 107 Fed. (2d) 377, 382, citing.

Brown v. Metropolitan Life Insurance Co. (AP DC), 100 Fed. (2d) 98.

C.

1. The decision of the Court below affirms the continued power of the Indiana Bankruptcy Court over the National Aircraft Corporation's assets after the Missouri Bankruptcy Court had approved its subsidiary debtor petition and admitted it to reorganization with its parent corporation. The decision presents an important question of Federal law and the interpretation of the corporate reorganization provisions of the Chandler Act with respect to the power of a reorganizing court to admit a subsidiary corporation to the reorganization proceedings of its parent corporation and its power to stay proceedings in ordinary bankruptcy instituted against the subsidiary in another district after the reorganizing court had approved the debtor petition of the parent corporation.

The decision below is of far-reaching importance and almost certain to thwart the purpose of the corporate reorganization provisions of the Chandler Act. The question has not been, but should be settled by a decision of this Court.

2. The decision presents an important question of Federal law and the interpretation of the Chandler Act which has not been, but should be settled by this Court.

The decision of the Court below affirmed the continued jurisdiction of the Indiana Bankruptcy Court over the assets of a subsidiary corporation derived from pending proceedings under Chapters I to VII of the Chandler Act, notwithstanding another Bankruptcy Court had admitted the subsidiary to its parent's Chapter X proceeding, has in effect construed the provisions of Chapter X of the Chandler Act in such a manner as to thwart the Congressional purpose in enacting the Act.

More particularly the decision of the Court below is inconsistent with the legislative purpose as disclosed by Sections 111, 113, 148 and 149 and other sections of Chapter X, whereby it was sought to confer broad and sweeping powers upon a Bankruptcy Court which had received and approved a debtor petition for relief under Chapter X of the Act, and particularly to confer upon such Court exclusive jurisdiction of the debtor and its property, wherever located, with power to stay ordinary proceedings in bankruptcy and power to determine its own jurisdiction with finality and effect, except as against direct proceedings instituted in the same Court within a time fixed by the statute.

Argument.

The Questions Generally.

The conclusion of the Court below that the Indiana Court might deny recognition to the judgment of the Missouri Court admitting the National to reorganization with its parent corporation, and continue to control and sell the assets is of far-reaching importance.

The corporate reorganization provisions of the Chandler Act, it has always been assumed, were enacted for the purpose of providing a speedy and effective method for rehabilitating distressed corporations as necessary to the public economy. It was commonly recognized that this result could not be attained under the old system whereby out of regard to the dignity of established courts it was felt improper to permit one court to interfere with the possession which another court had acquired over specific property. To this end the Chandler Act, as it was believed, conferred broad and sweeping powers upon reorganization courts in which debtor petitions were filed

and among the powers which it was believed were thus conferred was the power to supersede by a judgment unimpeachable collaterally and unimpeachable in the same court except by prompt direct appeal.

The decision of the Court below is inconsistent with that assumption. By denying to a judgment of a reorganizing court approving a debtor petition the quality of res adjudicata and asserting the right of a court whose proceedings are stayed by such judgment to review the legal and factual basis of such judgment in one case is in effect equivalent to ruling that such judgments may always be reviewed for the legal and factual basis of the reorganizing court's jurisdiction, with the result that in every case, where another court is in possession of assets necessary to rehabilitation, application must be made to it so that it may determine the reorganizing court's jurisdiction to enter the judgment.

The situation in this case is illustrative of the manner in which the decision below will effectively thwart the Congressional purpose, and the urgency for the intervention of this Court, to determine the jurisdiction, one way or the other, of the respective courts.

The judgments of the two courts involved are mutually destructive yet, except this Court does intervene there is no way to break the deadlock.

As a result of the conflicting judgments, National Aircraft Corporation is neither and both, a bankrupt, and a debtor.

By the judgment of the Missouri Bankruptcy Court, it is a subsidiary debtor, in process of rehabilitation under Chapter X of the Chandler Act, and petitioner Duggan is charged to collect and conserve its assets.

By the judgment of the Court below, the same corporation is a bankrupt, and its assets must be speedily liquidated and respondent Sansberry is charged with that duty, yet he cannot liquidate the assets that are in the possession of the Missouri Bankruptcy Court.

Neither trustee and neither court can collect the very large outstanding accounts the debtor-bankrupt has against the United States Government. In fact, due to the close relationship and stock ownership of the National, by the Christopher Company, principal debtor, no final settlement can be made for the parent corporation because the war contracts, now terminated, must be settled on a cost basis, and the overhead of the two corporations, and two partnerships, taken over by the Missouri Bankruptcy Court, have a common or intermingled overhead expense.

The most ridiculous thing about the whole situation is that both judgments are final and neither judgment is effective. The time for appeal in the Missouri Bankruptcy Court judgment expired on May 19, 1944. The judgment of the Court below, of course, is final, unless this Court intervenes.

In the recent case of Williams v. North Carolina (decided May 21, 1945, and not yet reported), Mr. Justice Frankfurter, indicated that the Supreme Court is open to parties to state court proceedings, where one court has failed to give full credit to the judgments of another state as required by the Constitution.

We respectfully suggest that this Court should also intervene to break a deadlock between two courts of the United States, when it is necessary, to vindicate not only the powers and jurisdiction of one or the other court, but

where it is required, to vindicate the dignity and carry out the purpose of the liquidation provisions of the Chandler Act or the corporate reorganization provisions. In the public interest both should not fail.

A.

The question presents the question as to whether an unambiguous judgment of a Reorganization Court, approving a subsidiary debtor petition is entitled to credit standing alone, when assailed collaterally or if the proponents must establish jurisdictional facts by express findings of the Court or by extrinsic evidence.

The Court below ruled it could not stand alone and was not res adjudicata on collateral assault.

It is submitted that the ruling probably conflicts with the decision of this Court in the several cases that follow:

Chicot County Drainage District v. Baxter State Bank, 308 U. S. 372; L. Ed. 329.

The Court, in ruling upon whether or not the judgment of a reorganization Bankruptcy Court rendered under a statute which had subsequently been determined unconstitutional might be questioned in a later proceeding brought by a party whose rights were ostensibly foreclosed by the judgment, said:

> "The lower federal courts are all courts of limited jurisdiction, that is, with only the jurisdiction which Congress has prescribed. But nonetheless they are courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statute under which

> they are asked to act. And determinations of such questions, while open to direct review, may not be assailed collaterally."

Upon the authority of Stoll v. Gottlieb, 305 U. S. 165, 171, 172; 83 L. Ed. 104, 108, 109, the Court said the foregoing rule

> "applies equally to the decrees of the district courts sitting in bankruptcy, that is, purporting to act under a statute of Congress passed in the exercise of the bankruptcy power. The Court has the authority to pass upon its own jurisdiction and its decree sustaining jurisdiction against attack, while open to direct review, is res judicata in a collateral action" l. c. 377.

In the last named case, the Court received and approved a debtor petition of an alleged municipal corporation under the first Municipal Reorganization Act. It subsequently reorganized the Drainage District and cancelled bonds owned by the Baxter State Bank, who never appeared to the action or proved its bonds. Later the whole act was held unconstitutional by this Court in another proceeding, whereupon the Baxter Bank brought suit on its bonds, on the theory that the act, being void, the proceedings were a nullity. This Court, however, ruled the case, not on the validity of the act, and jurisdiction in fact, which could not be maintained, but upon settled principles of res adjudicata, and the impregnability of final judgments to collateral assault.

A like ruling was made by this Court in Kalb v. Feuerstein, 308 U. S. 433; 84 L. Ed. 370, in which case this Court considered like provisions of the Frazier-Lemke Act.

The ruling of the Court to the effect it might review the legal or factual basis of the Missouri Court's judgment directly conflicts with the ruling of probably all the circuits, including its own.

The following cases, directly affirm the rule, announced in principle, in the foregoing cases:

That as a court analogous to a court of general jurisdiction, as that term is applied to common law courts, courts of the United States, including bankruptcy courts, even without the aid of special statutes so declaring, have jurisdiction to determine their own jurisdiction, and that such determination is implied in the act of rendering the judgment, and when a judgment has been rendered, in a case where necessary parties are before it, its judgment is res adjudicata, both as to jurisdiction and on the merits when collaterally assailed:

> "If one federal court failed to give effect to the judgment of another federal court, the Supreme Court of the United States, as the head of the judicial system of the United States, would compel it to do so because 'they are many members yet but one body'."
>
> Caterpillar Tractor Co. v. International Harvester Co. (CCA. 3), 120 Fed. (2d) 82, l. c. 86.

> "When a collateral attack is made on a judgment, the Court will presume that all proceedings in the original action necessary to sustain the validity of the judgment, were regular," l. c. 879.
>
> Pen-Kan. Gas and Oil Co. v. Gas Co. (CCA. 6), 137 Fed (2d) 871-879.

> "Every court in rendering a judgment has the authority and does, tacitly or expressly, determine

its jurisdiction over the parties and over the subject-matter and its decree sustaining jurisdiction is not open to collateral attack," l. c. 632.

Walling v. Miller (CCA. 8), 138 Fed. (2d) 629-632.

"A court has power to determine whether or not it has jurisdiction of the subject-matter of a suit and of the parties thereto. As Mr. Justice Brandeis remarked in American Surety Company v. Baldwin, 287 U. S. 156; 77 L. Ed. 231: 'The principles of res judicata apply to questions of jurisdiction as well as to other issues,' l. c. 333.

Rippberger v. A. C. Allyn Co. (CCA. 2), 113 Fed. (2d) 332-333.

"Whether the suit was or was not one of which the Court had jurisdiction, there was certainly power in the Court to determine the question of jurisdiction; and even if there was a lack of jurisdiction, it is well settled that a judgment based on an erroneous assumption of jurisdiction would not have been void or subject to collateral attack."

Nye v. U. S. (CCA. 4), 137 Fed. (2d) 73-77.

Mar-Tex Realization Corp. v. Wolfson (CCA. 2), 145 Fed. (2d) 360-362.

The Seventh Circuit itself, in an opinion by Judge Lindley, concurred in by Judge Sparks and Judge Major (the two judges who delivered the majority opinions in this case), ruled, that reorganizing courts have a jurisdiction that is "paramount and exclusive" and cannot be affected by proceedings in other courts, whether State or Federal, and that the only way of correcting error of a court taking jurisdiction of a reorganization proceeding is by appeal in the same action.

Re Park Beach Hotel Building Co. Corp. (CCA. 7), 96 Fed. (2d) 886 (77B) 891.

B.

1. The question is a counterpart of A. We have pointed out in A that the general rule is that judgments of United States courts are res adjudicata, as to jurisdiction when collaterally assailed.

The Court below disregarded the rule of res adjudicata and reviewed the legal basis of the Missouri Court's jurisdiction and drew its own conclusions as to the jurisdictional requirements of Chapter X. The cases cited in A are in point.

It might be well to point out the incongruity of permitting a court, whose jurisdiction has been stayed by another court under special statutory powers, to review such judgment. It would be the equivalent of permitting a lower court, which has received a mandate of a superior court to review the jurisdiction of the superior court.

Our discussion under "C" will be applicable to this heading as well.

2. Question B-2 is aimed chiefly at the conclusion of the Court below in effect, that it would not assume, from the actual rendition of the judgment, that the Missouri Bankruptcy Courts had found all necessary jurisdictional facts. On the contrary, it wanted to know what particular jurisdictional facts it had found, and it wanted it by a special finding, so it could review its sufficiency under the law it deemed applicable.

No matter what the Court below called it, that is simply a collateral review. A forthright review of the law deemed applicable by the Missouri Judge, followed by an express declaration that on certain facts, he concluded from his construction of the Act that he had jurisdiction, would not have satisfied the Court below, if he failed to conclude that it was necessary to his jurisdiction that Christopher

owned National's stock on December 27, 1943. If Christopher had foreclosed on the stock later or succeeded in clearing title to the stock later it would not be sufficient in the eyes of the Court below, even if the Judge who rendered the judgment thought it was. No, the Court below wanted to interpret the law, but that would make it a court of review.

At any rate, findings of fact are not essential parts of a judgment, nor does the absence of findings render an unambiguous judgment subject to collateral attack. The Court in

> Tulsa City Lines v. Mains (CCA. 10), 107 Fed. (2d) 377-382,

pointed out that findings of fact and conclusions of law are for the information of appellate courts entertaining direct appeals, citing Brown v. Metropolitan Life Insurance Co. (App. D. C.), 100 Fed. (2d) 98.

And the decision of the Court below probably conflicts, in principle, with the decision of this Court in Millikin v. Meyer, 311 U. S. 457, 85 L. Ed. 278, wherein this Court ruled that even an "irreconcilable contradiction" between the findings of fact and the judgment of a court of record did not impeach or render the judgment subject to collateral assault.

C.

1. Regardless of whether the Court below had jurisdiction to interpret the corporate reorganization provisions of the Chandler Act, it has in fact placed an interpretation thereon which is almost certain to thwart the purpose of those provisions of the Act.

It has done that in the first place by asserting a right to deny to reorganizing courts exclusive jurisdiction over the assets and to compel, in any case, an application to it or some other court for possession. Application denotes a hearing; a hearing a trial; a trial a judgment; a judgment an appeal by some interested party and so on. It all adds up to delay, and worst of all it imports a discretion in the collateral court to surrender or retain the assets. If the subsidiaries were numerous, and surrender of the assets was discretionary, it is hardly possible that all the collateral courts would surrender, yet one holdout might block the reorganization of a parent corporation as well as the numerous subsidiaries.

The reluctance of courts to surrender jurisdiction over property once they have acquired possession is understandable and that is why Chapter X was passed.

In the case of Warder v. Brady (CCA. 4), 115 Fed. (2d) 89, the Court pointed out a number of limitations on the power of bankruptcy courts which had been modified by the Chandler Act. Referring to the former necessity of going through a complicated procedure to acquire possession of assets the Court said:

> "We are concerned in the pending case, however, with the Act of 1938, which was passed for the very purpose of modifying these restrictions when engaged in a reorganization proceeding under Chapter X of the Statute."
>
> "Moreover the rule of comity is relaxed with respect to proceedings under Chapter X."

2. With respect to the specific sections of the statute involved, we submit that the conclusion of the Court below, that the Indiana Bankruptcy Court or its trustee by virtue of an ordinary bankruptcy proceeding retained

any jurisdiction over the assets, after the National's debtor petition had been sustained or had any power to review that judgment or any discretion with respect to surrendering the assets is of such far reaching importance, and so in conflict with the obvious purpose of the statute, as to impel this Court to establish the proper interpretation once for all.

The conclusion of the Court below probably grows out of a sort of vestigial concept that the two courts are co-ordinate. They are no more co-ordinate, when one is proceeding under Chapter X and the other under Chapters I to VII than a district judge, while sitting as an appellate judge, is a co-ordinate of another district judge who is conducting a jury trial. If the statute gives to one, a power over the jurisdiction of the other they are not co-ordinate. One is superior, the other inferior in jurisdiction.

The relevant sections of Chapter X answer the question and clearly:

> Section 111. Where not inconsistent with the provisions of this chapter, the Court in which the petition is filed shall for the purposes of this chapter have exclusive jurisdiction over the debtor and his property wherever located (11 USC 511).

It was clearly not the purpose of Congress to exclude from the jurisdiction of the reorganizing court, property in the possession of ordinary courts of bankruptcy.

> Section 113. Prior to the approval of a petition, the Judge may, upon cause shown, grant a temporary stay until the petition is approved or dismissed . . . of a prior pending bankruptcy . . . (USC 513).

It is obvious that there could be no sound purpose in authorizing a court to stay a pending bankruptcy until

the petition is approved and not provide for the extension of the stay when the petition has been approved.

> Section 148. Until otherwise ordered by the Judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy . . . (11 USC 548).

And the decision of the Court below is inconsistent with the implications of

> Section 149. An order which has become final approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the Court (11 USC 549).

The decision probably conflicts in principle with the decision of this Court in the case of **Kalb v. Feuerstein**, 308 U. S. 433, previously cited. In this case this Court interpreted a provision of the **Frazier-Lemke Act** which, in substantially the same terms as are in Section 111 (11 USC 511) of Chapter X, the Court said:

> "The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, state or federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law. If Congress has vested in the bankruptcy courts exclusive jurisdiction of farmer-debtors and their property and has by its act withdrawn from all other courts all power under any circumstances to maintain and enforce foreclosure proceedings against them, its act is the supreme law of the land which all courts, state and federal, must observe. The wisdom and desirability of an automatic statutory ouster of jurisdiction of all except bankruptcy courts over farmer-debtors and their property were considerations for Congress alone."

The Court continued and said that the act provided:

> "The filing of a petition * * * shall immediately subject the farmer and all his property, wherever located * * * to the exclusive jurisdiction of the court, including * * * the right of the equity of redemption where the period of redemption has not expired * * * *"

Compare the language just quoted from the Kalb case with the sections of Chapter X of the Chandler Act, just quoted.

It is perfectly clear that reorganization proceedings for the relief of debtors would not be effective unless some certainty could be attached to the orders and judgments of the reorganization court, or, if they could be attacked for technical or other jurisdictional defects long subsequent to the entering of such judgments. And it is also clear the purpose would be thwarted if the reorganization court or trustee had to fight numerous courts for assets necessary to rehabilitation.

But, the respondent will reply, the case involves a subsidiary, and a United States Court of Bankruptcy already has its assets. We have pointed out that unless an exception is made in the case of a subsidiary, a Reorganization Court has acquired the exclusive legal right to those assets, and could have enjoined that proceeding. It didn't have to enjoin it after it approved the debtor petition. Section 148 (11 USC 548) automatically stayed the other courts proceeding.

But let us examine the application of the Statute to subsidiary debtors. There is some vagueness which this Court ought to clear up.

The authority of the Missouri Court is clearly traceable by the application of the several sections of Chapter X of the Chandler Act.

Corporate Reorganizations Chapter X.

Section 106 (13). "Subsidiary shall mean a corporation . . . the majority of whose stock having power to vote . . . is owned . . . by another parent corporation, a petition by or against which has been approved."

Section 106 (9). "Petition shall mean a petition filed under this Chapter by a debtor, creditors or indenture trustee proposing that a plan of reorganization be effected."

Section 126. Corporations ". . . may, if no other petition by or against such corporation is pending under this Chapter, file a petition under this Chapter."

Section 129. "If a corporation be a subsidiary an original petition by or against it may be filed either as provided in Section 128 of this Act or in the Court which has approved the petition by or against its parent corporation."

It will be noticed that Section 129 without qualification gives to a subsidiary who desires to file, or to anyone who desires to file a debtor petition against it, the option to file "in the Court which has approved the petition by or against its parent corporation."

It is easy to see how Congress, eager to get away from the complicated and inefficient system formerly prevailing "cut across lots" as it were, and

> "By a wide sweep of power exclusive jurisdiction of all property wherever located is given with the power to stay or enjoin 'any judicial proceeding to enforce any lien upon the estate, as well as the power

to stay not only the commencement but also the continuation of suits against the debtor."

"The Court thus acquiring jurisdiction over the property of the debtor does so throughout the United States as against any state or federal receiver theretofore appointed in any other proceeding."

In Re Grayling Realty Corp., 74 Fed. (2d) 734.

But it is hard to conceive how Congress could have intended to leave subsidiary corporations, outside that sweep of power. There is certainly no doubt that reorganization courts were given power to stay a bankruptcy proceeding, even before approving a petition (Sec. 113) and the act of approving automatically stays a pending bankruptcy. Why should Congress desire to exclude subsidiaries? It in fact did not exclude subsidiaries.

Respondent, and one of the concurring judges below, tried to make a play on the adjective "original" as used in Section 129. The statute defines a "petition" as a petition "filed under this chapter by a debtor, creditors or indenture trustee proposing that a plan of reorganization be effected" (Sec. 106-9) (11 USC 506-9).

Having defined petition as a Chapter X petition, Section 129 says an "original petition" may, at the option of the party, be filed in the court which has approved the parent petition. Although we have used the same noun, "petition," respondent says loses its significance or gains a new significance when it is preceded by an adjective. Maybe it does. Original means: first or prime —the first of its kind. Original petition would in common language mean the first or prime petition filed under Chapter X, "proposing that a plan of reorganization be effected" (Sec. 106-9).

But respondent says "original petition," as used under Section 128, is subject to the inference that Congress intended to limit the right to file petitions under Sec. 128 to those corporations that did not have ordinary bankruptcy proceedings pending. Congress may have meant that, when it wrote Section 128. It is doubtful. It was probably a hangover from one or more of the old statutes. If it is found to be inconsistent with the Congressional purpose, the courts can eliminate it by construction.

But we are not concerned with Section 128. The National filed under Section 129. Whatever the purpose of Section 128, Section 129 is workable and meets the Congressional purpose.

In the report of the Senate Committee on the Judiciary, May 27, 1938, p. 25, with reference to the Chandler Act, it is stated:

> "Section 129 permits an exception to the regular venue requirements in situations where the Court which already has jurisdiction of the reorganization of a parent corporation should also have before it any proceedings for the reorganization of its subsidiary or subsidiaries. Petitions by or against subsidiaries may be filed with the Court in which the petition involving the parent corporation has been approved."

Congress, in enacting Chapter X, evidently did not intend to ignore the well known fact that a large portion of the business of corporations in the United States is carried on in co-operation with corporate subsidiaries, and hence it recognized and defined subsidiaries [Section 106 (13)]. In that definition the term subsidiary applies only to a corporation when a petition by or against the parent had been approved. The subsidiary is not a subsidiary within the meaning of the statute until its parent's petition has been approved.

In this connection Mr. Weinstein in his "The Bankruptcy Law of 1938" comments that the Chandler Act has restricted the definition of subsidiary as found in old Section 77-B in order to limit the right to file the petition by or against the subsidiary to cases where a petition by or against the parent has been filed and actually approved.

> "Since the petition by or against the subsidiary is in connection with or is part of the reorganization of the parent corporation, it was deemed advisable and in the interest of proper procedure to withhold this right until the proceeding by or against the parent has acquired permanency, at least to the extent of the approval of the petition."
>
> Weinstein, "The Bankruptcy Law of 1938," p. 197.

CONCLUSION.

We have stated our "reasons" in considerable detail and, for the sake of brevity, will refrain from filing a more extended Brief.

May we urge that, in our opinion, the matters involved in this application are of sufficient public importance to justify the Court in granting the writ.

Respectfully submitted,

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APPENDIX.

Relevant Sections of Chandler Act from Ordinary Bankruptcy Section (Chapter III).
(Emphasis Added).

Section 48 (g):

"g. In the case of **a plan of reorganization** confirmed under this Act, **the compensation of a** marshal, receiver, or **trustee in a prior pending bankruptcy proceeding superseded by the reorganization** proceeding shall be the same as hereinabove provided for a marshal, receiver, or trustee, as the case may be, for like services . . . " [11 USC 76 (g)].

From Corporate Reorganization Sections.
(Chapter X.)

Section 101. The provisions of this chapter shall apply **exclusively to proceedings under this chapter** (11 USC 501).

Section 106. (5) **Debtor** shall mean a corporation **by or against which a petition has been filed under this chapter** (11 USC 506-5).

Section 106 (9). **Petition** shall mean a petition **filed under this chapter** by a debtor, creditor or indenture trustee **proposing that a plan or reorganization shall be effected** (11 USC 506-9).

Section 106 (13). **Subsidiaries** shall mean a corporation substantially, all of whose properties are operated under lease or operating agreement, or **the majority of whose stock** having to vote for the election of directors, trustees, or other similar controlling bodies, **is owned, directly or indirectly,** through an intervening corporation or other medium **by another parent corporation, a petition by or against which has been approved** (11 USC 506-13).

Section 111. Where not inconsistent with the provisions of this chapter, **the court in which a petition is filed** shall, for the purposes of this chapter, **have exclusive jurisdiction of the debtor and its property wherever** located (11 USC 511).

Section 112. **Prior to the approval of a petition**, the jurisdiction, powers and duties of the court, and of its officers, where not inconsistent with the provisions of this chapter, **shall be the same as in a bankruptcy proceeding before adjudication** (11 USC 512).

Section 113. **Prior to the approval of a petition**, the **Judge may**, upon cause shown, **grant a temporary** stay, until the petition is approved or dismissed, **of a prior pending bankruptcy**, mortgage foreclosure or equity receivership proceeding and of any act or other proceeding to enforce a lien against a debtor's property and may upon cause shown enjoin or stay, until the petition is approved or dismissed, the commencement or continuation of a suit against a debtor (11 USC 513).

Section 114. **Upon the approval of a petition, the jurisdiction**, powers and duties of the court and of its officers, where not inconsistent with the provisions of this chapter, **shall be the same as in a bankruptcy proceeding upon adjudication** (11 USC 514).

Section 115. **Upon the approval of a petition the Court shall have and may, in addition to the jurisdiction, powers and** duties hereinabove and elsewhere in this chapter conferred and imposed upon it, **exercise all the powers**, not inconsistent with the provisions of this chapter, which **a court of the United States would have had if it had appointed a receiver in equity of the property of the debtor on the ground of insolvency** or inability to meet its debts as they mature (11 USC 515).

Section 116. **Upon the approval of a petition,** the Judge may, in addition to the jurisdiction, powers and duties hereinabove and elsewhere in this chapter conferred and imposed upon him and the Court—(3) **authorize a receiver or trustee or a debtor in possession,** upon such notice as the Judge may prescribe and upon cause shown, **to lease or sell any property of the debtor,** whether real or personal, upon such terms and conditions as the Judge may approve; and (4) in addition to the powers provided by Section 11 of this Act **enjoin or stay until final decree** the commencement or continuation of a suit against the debtor or its trustee **or any act or proceeding to enforce a lien upon the property of the debtor** (11 USC 516).

Section 126. A corporation or three or more creditors who have claims against a corporation or its property amounting in the aggregate to $5000.00 or over, liquidated as to amount and not contingent as to liability, **or an indenture trustee** where the securities outstanding under the indenture are liquidated as to amount and not contingent as to liability, **may, if no other petition by or against the corporation is pending under this chapter, file a petition under this chapter** (11 USC 526).

Section 127. **A petition may be filed in a pending bankruptcy proceeding either before or after the adjudication of a corporation** (11 USC 527).

Section 128. **If no bankruptcy proceeding** is pending **an original petition may be filed with the Court in whose territorial jurisdiction** the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction (11 USC 528).

Section 129. If a corporation be a subsidiary an original petition by or against it may be filed either as provided in Section 128 of this Act **or in the court which has ap-**

proved the petition by or against its parent corporation (11 USC 528).

Section 131. **A creditor's or indenture trustee's petition** shall, in addition to the allegations required by Section 130 of this Act, state—(1) **that the corporation was adjudged a bankrupt in a pending proceeding in bankruptcy**; or—(5) that the corporation has committed an act of bankruptcy within four months of the filing of the petition (11 USC 531).

Section 148. **Until otherwise ordered by the Judge, an order approving the petition shall operate as a stay of a prior pending bankruptcy,** mortgage foreclosure, or equity receivership, or of any act or other proceeding to enforce a lien against the debtor's property (11 USC 548).

Section 149. **An order which has become final approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court** (11 USC 549).

Section 156. Provides for the appointment of a trustee or the continuance of the debtor in possession (11 USC 549).

Section 189. **A trustee or debtor in possession,** upon authorization by the Judge, **shall operate the business and manage the property of the debtor,** during such period limited or indefinite, as the Judge may from time to time fix, and during such operation or management shall file reports thereof with the Court at such intervals as the Court may designate (11 USC 589).

Section 248. **In the case of the dismissal of a proceeding under this chapter,** and the entry of an order therein **directing that a superseded bankruptcy** be proceeded with, the **compensation allowed by the Judge,** in the course of

the proceeding under this chapter, to the Referee, Marshal, receiver, **or trustee in the bankruptcy proceeding** for services rendered by them in such bankruptcy proceeding shall be deemed to have been allowed in such bankruptcy proceedings, and such compensation shall be considered in connection with the making of future allowances therein or shall be readjusted, so as to comply with the provisions of this Act fixing their compensation in a bankruptcy proceeding (11 USC 648).

Section 256. **A petition may be filed under this chapter notwithstanding the pendency of a prior mortgage foreclosure,** equity, or **other proceeding in a court of the United States** or of any state in which a receiver **or trustee** of all or any part of the property of a debtor has been appointed or for whose appointment an application has been made (11 USC 656).

Section 257. **The trustee appointed under this chapter,** upon his qualification, or if a debtor is continued in possession, the debtor, **shall become vested with the rights,** if any, **of such prior** receiver or **trustee,** in such property and with the right to the immediate possession thereof. **The trustee** or debtor in possession **shall also have the right to immediate possession of all property of the debtor in the possession of a trustee under a trust deed** or a mortgage under a mortgage.

Section 258. The Judge shall make such provision as may be equitable for the protection of the obligation incurred by a receiver or **trustee in such prior proceeding** and for the payment of the reasonable costs and expenses incurred therein as may be allowed by the Judge (11 USC 657).

Section 259. **Upon the dismissal of a proceeding under this chapter, such prior proceeding shall become reinstated,** and the Judge shall allow the reasonable costs and expenses under this chapter, including the allowances provided for in Article XIII of this chapter, and shall make appropriate provision for the re-transfer of said property to the person or persons entitled thereto upon such terms as may be equitable for the protection of the obligations incurred in the proceedings under this chapter by a trustee or debtor in possession, and, for the payment of the costs and expenses of the proceedings (11 USC 659).

Order of United States District Court in Bankruptcy, Eastern Division, Eastern District, of Missouri, dated August 10, 1945 (omitting caption and finding).

Ordered that Jerome F. Duggan, Trustee, be and is hereby authorized and directed to cause to be prepared and filed in the United States Supreme Court his petition for certiorari to review the opinion and judgment of the United States Circuit Court of Appeals for the Seventh Circuit rendered on the 21st day of April, 1945, Motion for Rehearing overruled on June 11, 1945, and that the National Aircraft Corporation be allowed to join the said Trustee in said petition and in the Brief.

RICHARD M. DUNCAN,
Judge.